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No. 10-515

In The Supreme Court of the United States

SARAH HATAM PETERSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether a single offense of Structuring Transactions to Evade Reporting Requirements under 31 U.S.C. § 5324 itself constitutes a "pattern of unlawful activity" that warrants application of United States Sentencing Guideline § 2S1.3(b)(2)'s offense level enhancement.

Whether the term "pattern of unlawful activity," as used in U.S.S.G. § 2S1.3(b)(2), is ambiguous such that the "Rule of Lenity," reaffirmed in *United States v. Santos*, 128 S. Ct. 2020 (2008), applies.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 4

A. Proceedings Before the District Court 7

B. The Court of Appeals' Decision 9

REASON FOR GRANTING THE PETITION 14

I. The Courts Of Appeals, As A Result Of the Fourth Circuit's Decision, Are Divided As To Whether U.S.S.G. § 2S1.3(b)(2) Applies To A Single Structuring Offense, And The Fourth Circuit's Decision Conflicts With This Court's Precedent And The Plain Meaning Of U.S.S.G. § 2S1.3(b)(2). 15

Table of Contents
(continued)

Page

II. The Fourth Circuit's Decision Conflicts With This Court's Decisions In *Huddleston v. United States* And *United States v. Santos* Addressing The Rule Of Lenity..... 21

CONCLUSION..... 23

APPENDIX A: Opinion of the United States Court of Appeals for the Fourth Circuit Dated June 17, 2010.....A-1

APPENDIX B: District Court Proceedings A-13

APPENDIX C: Order on Rehearing of the United States Court of Appeals for the Fourth Circuit entered July 13, 2010.....A-61

APPENDIX D: 31 U.S.C. § 5324.....A-62

APPENDIX E: 18 U.S.C. App. § 2S1.3.....A-65

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

Huddleston v. United States,
415 U.S. 814 (1974) 21

McBoyle v. United States,
283 U.S. 25 (1931) 22

Ratzlaf v. United States,
510 U.S. 135 (1994) 6, 15

United States v. Bass,
404 U.S. 336 (1971) 22

United States v. Bellemare,
No. 1:07-cr-00105 (D. Vt. June 26, 2008) 14

United States v. Bergen,
No. 3:07-cr-00294 (D. Conn. Feb. 29, 2008) 15

United States v. Bond,
No. 3:10-cr-00025 (D. Conn. Sept. 8, 2010) 14

United States v. Dashney,
937 F.2d 532 (10th Cir. 1991) 6, 16

United States v. Davenport,
929 F.2d 1169 (7th Cir. 1991) 6, 16

United States v. Flowers,
No. 5:10-cr-00005 (WD Ky. Sept. 17, 2010) 14

United States v. Gradwell,
243 U.S. 476 (1917)..... 22

United States v. Handakas,
286 F.3d 92 (2d Cir. 2002)..... 6, 15, 18

United States v. Hassan, et al., No. 4:06-cr-00053 (ED Ark. March 6, 2008). 14-15

United States v. Haymond,
No. 2:07-cr-00278 (WD Wash. July 2, 2008).... 14

United States v. Hovind,
305 Fed. Appx. 615 (11th Cir. 2008)..... 18

United States v. Kattan-Kassin,
696 F.2d 893 (11th Cir. 1983)..... 17, 23

United States v. Lemley,
No. 3:07-cr-00210 (D. Conn. Feb. 20, 2008)..... 15

United States v. McVay,
No. 2:07-cr-00349 (ND Ala. June 10, 2008)..... 14

United States v. Nall,
949 F.2d 301 (10th Cir. 1991)..... 6, 16

United States v. Ortiz Barrera,
922 F.2d 664 (11th Cir. 1991)..... 18

United States v. Pelligrini,
2008 U.S. Dist. LEXIS 97474 (D.N.J. Nov. 26, 2008)..... 14

United States v. Santos,
128 S. Ct. 2020 (2008)..... 14, 21, 22

United States v. So,
755 F.2d 1350 (9th Cir. 1985) 17, 23

United States v. St. Michael's Credit Union,
880 F.2d 579 (1st Cir. 1989) 10

FEDERAL STATUTES

United States Sentencing Guideline
§ 2S1.3 ..... *passim*

18 U.S.C. §§ 1956 and 1957 14

28 U.S.C. § 1254 1

28 U.S.C. § 1291 10

31 U.S.C. § 5311 4

31 U.S.C. § 5313 ..... 1, 2, 4

31 U.S.C. § 5324 ..... *passim*

RULES

Rule 4(b) of the Federal Rules of Criminal
Procedure 10

OTHER AUTHORITIES

Black's Law Dictionary 1574 (8th ed. 2004) 22

Courtney J. Linn, Redefining the Bank Secrecy Act:
Currency Reporting and the Crime of Structuring,
50 Santa Clara L. Rev. 407 (2010) ..... passim

PETITION FOR A WRIT OF CERTIORARI

* * * *

Petitioner Sarah Hatam Peterson ("Peterson") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra* A-1) is reported at 607 F.3d 975. The orders of the district court (*id.* at A-13 to A-60) are unreported, but are reproduced in the attached appendix.

JURISDICTION

The opinion of the court of appeals was entered on June 17, 2010. (*Id.* at A-1) The court of appeals denied Peterson's petition for rehearing and rehearing en banc on July 13, 2010. (*Id.* at A-61). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

31 U.S.C. § 5324(a) provides:

> Domestic coin and currency transactions involving financing institutions. No person shall, for purposes of evading the reporting requirements of section 5313(a) or any regulation prescribed under any such section, the reporting or recordkeeping requirements imposed by any order issued under section 5326, or the

recordkeeping requirements imposed by any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508 --

(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a) or 5325 or any regulation prescribed under any such section, to file a report or to maintain a record required by an order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508;

(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) or 5325 or any regulation prescribed under any such section, to file a report or to maintain a record required by any order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508, that contains a material omission or misstatement of fact; or

> (3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

U.S.S.G. § 2S1.3(a) and (b) provide:

> (a) Base Offense Level:
>
> > (1) 8, if the defendant was convicted under 31 U.S.C. § 5318 or 5318A; or
> >
> > (2) 6 plus the number of offense levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to the value of the funds, if subsection (a)(1) does not apply.
>
> (b) Specific Offense Characteristics
>
> > (1) If (A) the defendant knew or believed that the funds were proceeds of unlawful activity, or were intended to promote unlawful activity; or (B) the offense involved bulk cash smuggling, increase by 2 levels.
> >
> > (2) If the defendant (A) was convicted of an offense under subchapter II of chapter 53 of title 31, United States Code; and (B) committed the offense as part of a pattern of unlawful activity

> involving more than $100,000 in a 12-month period, increase by 2 levels.
>
> (3) If (A) subsection (a)(2) applies and subsections (b)(1) and (b)(2) do not apply; (B) the defendant did not act with reckless disregard of the source of the funds; (C) the funds were the proceeds of lawful activity; and (D) the funds were to be used for a lawful purpose, decrease the offense level to level 6.

STATEMENT OF THE CASE

Federal law requires that financial institutions file reports with the Secretary of the Treasury whenever they are involved in cash transactions in excess of certain amounts. 31 U.S.C. § 5313(a). This law was enacted to circumvent the use of financial institutions as intermediaries by persons engaged in criminal conduct, and to assist in the investigation and prosecution of criminal and terrorist activities. 31 U.S.C. § 5311.

To deter individuals from avoiding these reporting requirements, Congress enacted antistructuring laws. 31 U.S.C. § 5324. Specifically, it is unlawful for a person to break a single deposit that would trigger a financial institution's reporting requirement into several smaller deposits that would

not trigger the financial institution's reporting requirement. *Id.*

A person guilty of structuring is subject to sentencing under United States Sentencing Guideline ("U.S.S.G.") § 2S1.3. The base offense level for structuring is 6 and is increased based on the amount structured as outlined in the Theft Table at U.S.S.G. § 2B1.1. U.S. Sentencing Guideline Manual § 2S1.3(a)(2). Two additional levels are then added if (1) the defendant knew or believed that the funds were proceeds of unlawful activity or were intended to promote unlawful activity, or (2) the offense involved bulk cash smuggling. *Id.* at § 2S1.3(b)(1). Two more levels are then added if the defendant structured the funds "as part of a pattern of unlawful activity involving more than $100,000 in a 12-month period." *Id.* at § 2S1.3(b)(2). And "pattern of unlawful activity" is defined as "at least two separate occasions of unlawful activity involving a total amount of more than $100,000 in a 12-month period, without regard to whether any such occasion occurred during the course of the offense or resulted in a conviction for the conduct that occurred on that occasion." *Id.* at § 2S1.3, cmt. n.3. Finally, a defendant's offense level will be reduced to 6 under a safe harbor provision if parts (b)(1) and (b)(2) of § 2S1.3 were not applied, the defendant did not act with a reckless disregard as to the source of the funds, and the funds were proceeds of and used for a lawful purpose. *Id.* at § 2S1.3(b)(3).

Several courts of appeals have interpreted the structuring of a deposit as constituting only one unlawful act capable of prosecution. *See, e.g.*, *United States v. Handakas*, 286 F.3d 92 (2d Cir. 2002), *overruled in part on other grounds*, *United States v. Rybicki*, 354 F.3d 124, 144 (2d Cir. 2003); *United States v. Dashney*, 937 F.2d 532 (10th Cir. 1991); *United States v. Davenport*, 929 F.2d 1169 (7th Cir. 1991); *United States v. Nall*, 949 F.2d 301 (10th Cir. 1991). And this Court has defined structuring as "breaking up a single transaction above the reporting threshold into two or more separate transactions – for the purpose of evading a financial institution's reporting requirement." *Ratzlaf v. United States*, 510 U.S. 135, 136 (1994).

In this case, the district court applied U.S.S.G. § 2S1.3(b)(2)'s sentencing enhancement holding that the structuring of a single deposit itself constituted "a pattern of unlawful activity involving more than $100,000 in a 12-month period." (App., *infra* A-15 to A-16). The Fourth Circuit affirmed, holding for the first time, and in contravention of this Court's and the other courts of appeals' holdings, that each of the multiple smaller deposits comprising a single, larger structured deposit is itself an unlawful act. (*Id.* at A-11 to A-12).

As a result of the Fourth Circuit's holding, every defendant found guilty of structuring a single deposit over $100,000 will receive a two-level enhancement under U.S.S.G. § 2S1.3(b)(2), and the safe-harbor provision found in U.S.S.G. § 2S1.3(b)(3)

will be nullified in such structuring cases. Under the Fourth Circuit's pronouncement, a single unlawful act is now segmented and compounded to increase artificially a defendant's offense level under the U.S.S.G. Such a holding violates this Court's precedent, conflicts with other courts of appeals, is illogical and causes an absurd result, and violates the Rule of Lenity.

A. Proceedings Before the District Court

Peterson, who owned and operated a chiropractic practice in Northern Virginia, and her late husband, Donald Peterson ("Donald"), divorced in August 2007. (App., *infra* A-2). The divorce settlement required Peterson to pay Donald $500,000. (*Id.*) Peterson kept a large portion of the proceeds of her chiropractic practice in cash in a safe deposit box, and was to pay $100,000 of the divorce settlement from the monies held in the safe deposit box. (*Id.*) To keep a record of the payment, Peterson decided to deposit the money into her own account and then write a check to Donald thereafter.

Donald, a former stockbroker, told Peterson to break the $100,000 deposit into smaller deposits to avoid the paperwork that results from depositing such a large amount of money. (*Id.*) So from August 9, 2006 to August 29, 2006, Peterson made eleven deposits ranging from $8,300 to $9,500. (*Id.*) The total amount deposited was $101,200. (*Id.*)

On October 2, 2008, a Criminal Information was filed in the district court charging Peterson with

one count of Structuring Transactions to Evade Reporting Requirements, in violation of 31 U.S.C. § 5324(a)(3). (*Id.* at A-3). Pursuant to a written plea agreement, Peterson pled guilty to the single charge. (*Id.*)

In a Presentence Investigation Report, the probation officer recommended that the district court apply U.S.S.G. § 2S1.3(b)(2), which would enhance Peterson's offense level by two for committing the offense "as part of a pattern of unlawful activity." (*Id.*) By applying U.S.S.G. § 2S1.3(b)(2), the safe-harbor provision in U.S.S.G. § 2S1.3(b)(3), which would have reduced Peterson's offense level to 6, could not apply.

The plea agreement contemplated that the parties would litigate the applicability of U.S.S.G. § 2S1.3(b)(2) to this case. Peterson argued that the sentencing enhancement should not apply because, among other things, the one count of structuring a single deposit constituted only one unlawful activity that necessarily involved eleven transactions. (*Id.* at A-3 to A-4). Thus, because the crime itself could not be accomplished without the several smaller deposits, each of which was not unlawful, U.S.S.G. § 2S1.3(b)(2) should not apply.

The Government argued for application for the sentencing enhancement, contending that the act of structuring itself constitutes a "pattern of unlawful activity." Moreover, the Government argued that adopting Peterson's interpretation of

U.S.S.G. § 2S1.3(b)(2)(B) would lead to an illogical result and render § 2S1.3(b)(2)(A) superfluous.

At sentencing, the district court acknowledged that the language of U.S.S.G. § 2S1.3(b)(2) "could have been clearer," and has created a "problem." (App., *infra* A-14). In addition, the district court noted that "[i]t's a very close question." (*Id.* at A-15). Nevertheless, the court held that the sentencing enhancement for engaging in a "pattern of unlawful activity" does "apply when there is only one offense." (*Id.* at A-16). The court reached its conclusion, however, "with much less certitude" than normal and would not have been surprised if another court disagreed. (*Id.*)

After enhancing Peterson's offense level by two, the district court ordered that Peterson pay a $30,000 fine, $100 special assessment, and forfeiture amount of just over $10,000. (*Id.* at A-21). In addition, the district court sentenced Peterson to a prison term of twelve months and one day. (*Id.* at 20-21). One week later, however, the district court held another sentencing hearing, stating that it had improperly treated the calculated guideline range as determinative. (*Id.* at A-26). The district court vacated Peterson's prison term and, instead, sentenced Peterson to eight months in community confinement – in addition to the previously imposed financial penalties. (*Id.* at A-40).

B. The Court of Appeals' Decision

Peterson timely appealed the district court's sentence under Rule 4(b) of the Federal Rules of Criminal Procedure, and the Fourth Circuit maintained jurisdiction under 28 U.S.C. § 1291. The appeal raised three issues. First, whether a single offense of structuring constituted a "pattern of unlawful activity." Second, whether U.S.S.G. § 2S1.3(b)(2) applied to a defendant who did not act willfully. And third, whether the phrase "pattern of unlawful activity" used in U.S.S.G. § 2S1.3(b)(2) was ambiguous such that the Rule of Lenity applied.

The Fourth Circuit found that U.S.S.G. § 2S1.3(b)(2) applied in three situations. "First, it applies when the occasions of unlawful activity involving more than $100,000.00 are separate from the structuring offense itself." (App., *infra*, A-7). The court gave as an example a defendant who structures for the purpose of evading his taxes – tax evasion and structuring are two unlawful acts. (*Id.*) The court then held that the enhancement also applies in cases of "serial structuring," which the court defined as "a pattern of structuring activity involving more than $100,000.00 in any twelve-month period, and applies 'even in the absence of other criminal activity.'" (*Id.*) For instance, in *United States v. St. Michael's Credit Union*, 880 F.2d 579 (1st Cir. 1989), the defendant failed to file currency transaction reports fifty different times for twenty-five different customers – each of which constituted a separate unlawful act, although they collectively formed the basis of a single charge in the

indictment. (App., *infra* A-7). As support for applying U.S.S.G. § 2S1.3(b)(2) to these first two situations, the Fourth Circuit cited Courtney J. Linn, *Redefining the Bank Secrecy Act: Currency Reporting and the Crime of Structuring*, 50 Santa Clara L. Rev. 407 (2010). (*Id.*)

The Fourth Circuit cited no authority for its application of U.S.S.G. § 2S1.3(b)(2) to its "final situation," however, where "the structuring offense itself involves a pattern of unlawful activity." (*Id.* at A-7 to A-8). These situations, the court stated, "typically involve[] a defendant who structures a series of deposits totaling in excess of $100,000.00 to avoid triggering the bank's duty to report (perfect structuring) or in an attempt to defeat the bank's responsibility to report (imperfect structuring)." (*Id.*) Yet, the article cited by the Fourth Circuit refuted such a holding stating U.S.S.G. § 2S1.3(b)(2) does not apply to a defendant who possesses a single "cash hoard" of over $100,000 "and then breaks it into sub-$10,000 deposits" because in such a case the defendant "commit[ted] only one structuring violation, not a series of violations." *Redefining the Bank Secrecy Act*, 50 Santa Clara L. Rev. 407, 486 n.336.

Nevertheless, the court held that its construction was consistent with the framework of U.S.S.G. § 2S1.3 and Application Note 3 of that same section. (App., *infra* A-8 to A-9). The court found that § 2S1.3 punishes defendants more severely as the amount of funds structured increases, and that

leniency is given to defendants who structure isolated deposits that are less than $100,000. The safe harbor provision is, according to the court, "a very narrow opening" for those defendants who structure "an *isolated* monetary transaction or several monetary transactions that do not cross the $100,000.00 threshold." (*Id.* at A-9) (emphasis in original). By engaging in multiple transactions amounting to over $100,000, a defendant eliminates the possibility of a safe harbor reduction in his offense level. In addition, because the enhancement may be triggered by unlawful activity that occurs during the course of the offense of conviction, the court held its decision was consistent with Application Note 3 following U.S.S.G. § 2S1.3. (*Id.*)

Additionally, the court cited two purported "absurdities" that would result if the enhancement did not apply to a single structuring offense over $100,000. (*Id.* at A-9 to A-11). First, a defendant who structures a single $101,000 deposit would receive an offense level of 6, but a defendant who structures one $52,000 deposit and, later, a $49,000 deposit would receive a level of 14. (*Id.* at A-9 to A-10). The court ignored the fact that the second defendant made two separate, conscious choices to violate the law and focused instead on the fact that the total amounts involved were the same and, thus, the sentences should not be calculated differently. (*Id.*) Moreover, the court found that Peterson's interpretation of U.S.S.G. § 2S1.3(b)(2) would result

in a harsher sentence for the "imperfect"[1] structuring of $101,000 and a lesser sentence for the "perfect" structuring of the same amount. (*Id.* at A-10 to A-11).

Ultimately, the court held that "each separate deposit [in the structuring of a single larger deposit] is an unlawful act, as the government could base a prosecution on any one *or* all of the deposits." (*Id.* at A-11). Thus, the court concluded that "because Peterson made more than one unlawful deposit and the total of her eleven deposits in a twelve-month period exceeded $100,000.00, she committed her offense as part of a pattern of unlawful activity under U.S.S.G. § 2S1.3(b)(2)." (*Id.* at A-12). The court also rejected the argument that the Rule of Lenity required that the U.S.S.G. be construed in her favor because, according to the court, there was no ambiguity in § 2S1.3. (*Id.* at A-12).

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[1] Neither the U.S. Code nor the Sentencing Guidelines refer to "perfect" or "imperfect" structuring. The only reference counsel has found making such a distinction is the article, *Redefining the Bank Secrecy Act*, 50 Santa Clara L. Rev. 407, 438-40, relied on by the Fourth Circuit in some instances, but not others. There, "imperfect" structuring refers to a defendant's *attempt* to avoid a bank's reporting requirement by breaking a $10,000 deposit into smaller deposits that are made the same day and at the same bank, thus, nevertheless triggering the bank's reporting requirement because collectively the deposits exceeded the $10,000 threshold. "Perfect" structuring refers to a defendant's attempt to avoid a bank's reporting requirement by breaking a deposit into smaller deposits made either at different banks or at the same bank, but on different days so that the deposits made at a single bank on a single day do not collectively exceed $10,000.

REASON FOR GRANTING THE PETITION

The appropriate interpretation of 31 U.S.C. § 5324 and U.S.S.G. § 2S1.3 is critical now more than ever. The PATRIOT Act included many significant reforms to the Bank Secrecy Act that has heightened enforcement of financial institutions' reporting requirements to combat terrorist and other criminal activity. *Redefining the Bank Secrecy Act*, 50 Santa Clara L. Rev. 407, 422-26. In addition, this Court's decision in *United States v. Santos*, 128 S. Ct. 2020 (2008), and amendments to the traditional money laundering statutes in 18 U.S.C. §§ 1956 and 1957, has increased prosecutorial reliance on antistructuring statutes. *Redefining the Bank Secrecy Act*, 50 Santa Clara L. Rev. 407, 423-25. Indeed, since 2007, the Department of Justice and Department of the Treasury have formed review teams to investigate and prosecute crimes under the Bank Secrecy Act – structuring crimes in particular. *Id.* at 424-26. And courts across the country have struggled to consistently interpret and apply the relevant provisions of the U.S. Code and U.S.S.G. *See, e.g.*, *United States v. Flowers*, No. 5:10-cr-00005 (WD Ky. Sept. 17, 2010); *United States v. Bond*, No. 3:10-cr-00025 (D. Conn. Sept. 8, 2010); *United States v. Pelligrini*, 2008 U.S. Dist. LEXIS 97474 (D.N.J. Nov. 26, 2008); *United States v. Haymond*, No. 2:07-cr-00278 (WD Wash. July 2, 2008); *United States v. Bellemare*, No. 1:07-cr-00105 (D. Vt. June 26, 2008); *United States v. McVay*, No. 2:07-cr-00349 (ND Ala. June 10, 2008); *United States v. Hassan*, et al., No.

4:06-cr-00053 (ED Ark. March 6, 2008); *United States v. Bergen*, No. 3:07-cr-00294 (D. Conn. Feb. 29, 2008); *United States v. Lemley*, No. 3:07-cr-00210 (D. Conn. Feb. 20, 2008). The proper interpretation of the antistructuring statutes and corresponding U.S.S.G. is, therefore, critical to the countless prosecutions that have resulted and will continue to result from the government's ongoing initiative.

I. The Courts Of Appeals, As A Result Of the Fourth Circuit's Decision, Are Divided As To Whether U.S.S.G. § 2S1.3(b)(2) Applies To A Single Structuring Offense, And The Fourth Circuit's Decision Conflicts With This Court's Precedent And The Plain Meaning Of U.S.S.G. § 2S1.3(b)(2).

This Court defines the unlawful act of structuring as "break[ing] up a *single* transaction above the reporting threshold into two or more separate transactions – for the purpose of evading a financial institution's reporting requirement." *Ratzlaf v. United States*, 510 U.S. 135, 136 (1994) (emphasis added). Until now, every court to consider what constitutes the "unlawful" activity in a structuring offense has concluded that it is the act of breaking up a large deposit to avoid reporting that is unlawful, not the resulting smaller deposits derived from the initial deposit. *See United States v. Handakas*, 286 F.3d 92, 98-99 (2d Cir. 2002) ("structuring itself, and *not the individual deposit*, is the unit of crime . . . [because] each and every structuring offense, by nature entails multiple

transfers of funds in amounts small enough to avoid detection") (emphasis added); *United States v. Davenport*, 929 F.2d 1169, 1171 (7th Cir. 1991) (holding that 31 U.S.C. § 5324 "does not forbid the making of deposits. It forbids the structuring of *a* transaction. . . . The receipt and deposit of the $100,000 were the transaction that the [defendants] structured by breaking it up into multiple deposits. . . . There was *one structuring, one violation*") (emphasis added); *see also United States v. Nall*, 949 F.2d 301 (10th Cir. 1991); *United States v. Dashney*, 937 F.2d 532 (10th Cir. 1991). The Fourth Circuit, however, after acknowledging the case law to the contrary, held that each smaller deposit derived from a single larger deposit is unlawful, and defendants are subject to a sentencing enhancement found in § 2S1.3(b)(2) for engaging in a "pattern of unlawful activity" as a result. (App., *infra* A-11 to A-12).

This Court's, and the other courts of appeals', reasoning is consistent with the purpose and structure of the U.S.S.G. Section 2S1.3 takes into consideration several factors in fashioning a defendant's offense level. For instance, § 2S1.3(a)(2) alters a defendant's offense level based on the amount of money structured. In part (b)(1), a defendant's purpose in effectuating the offense is analyzed – subjecting the defendant to a higher offense level if he "knew or believed that the funds were proceeds of unlawful activity, or were intended to promote unlawful activity." And finally, in part

(b)(2), a defendant's culpability is measured based on the number of unlawful activities engaged in while violating the structuring laws.

Mirroring an enhancement provision in 31 U.S.C. § 5324(d)(2), U.S.S.G. § 2S1.3(b)(2) provides for a two level increase in a defendant's offense level if "the defendant . . . committed the offense as part of a pattern of unlawful activity involving more than $100,000 in a 12-month period." And in Application Note 3 of § 2S1.3, a "pattern of unlawful activity" is defined as "at least *two separate occasions of unlawful activity* involving a total amount of more than $100,000 in a twelve-month period, without regard to whether any such occasion occurred during the course of the offense or resulted in a conviction for the conduct that occurred on that occasion." (emphasis added). The two level increase "gives effect to Congress's manifest intent that cases of structuring involving certain aggravating factors, including serial structuring, be prosecuted more severely than cases of simple structuring." *Redefining the Bank Secrecy Act*, 50 Santa Clara L. Rev. 407, 486. Indeed, the courts of appeals have recognized that the legislative purpose underlying § 2S1.3(b)(2) was a desire "to punish severely serious, *continuing* violations" of the structuring laws. *United States v. So*, 755 F.2d 1350, 1355 (9th Cir. 1985) (citing *United States v. Kattan-Kassin*, 696 F.2d 893 (11th Cir. 1983)) (emphasis added).

In every case except Peterson's, every court that has enhanced a defendant's sentence under

§ 2S1.3(b)(2)(B) did so when there were either multiple structuring offenses involved or where a single structuring crime accompanied some other criminal activity. *See, e.g., United States v. Hovind*, 305 Fed. Appx. 615, 619 (11th Cir. 2008) (applied to defendants guilty of 45 structuring counts and other charges); *United States v. Ortiz Barrera*, 922 F.2d 664, 665 (11th Cir. 1991) (structured funds were the product of drug-related money laundering). Indeed, in *United States v. Handakas*, the Second Circuit stated that the statutory enhancement "provision is intended to enhance sentences for more serious structuring offenses; it is not a device for segmenting and compounding a single offense." 286 F.3d at 98. Thus, when a defendant structures a single, large deposit, which necessarily results in the depositing of several smaller deposits, § 2S1.3(b)(2) does not apply.

In addition to increasing a defendant's offense level based on certain aggravating factors, § 2S1.3 provides for a reduction in a defendant's offense level when certain mitigating factors are present. The unlawful act of structuring a deposit to avoid the reporting requirements is a regulatory offense that enhances the government's ability to track the proceeds of criminal activity. But structuring is not inevitably nefarious. That is why Congress provided a safe-harbor provision for those defendants who engage in a single act of structuring without a sinister purpose. Congress recognized that there are differences between a vacationer seeking to avoid the

perceived burden of paperwork by structuring her gambling winnings, a defendant who repeatedly structures several intended deposits in an effort to hide money, and a criminal who wishes to launder money through the continuous structuring of the proceeds of his illicit trade. Thus, where a defendant structures funds lawfully obtained, which are to be used for a lawful purpose, without also engaging in other unlawful activity involving more than $100,000, that defendant is entitled to a reduction in her offense level.

In this case, Peterson took a single deposit that was over the reporting threshold and divided it into eleven smaller deposits to avoid the reporting requirements. The funds were lawfully obtained from her chiropractic practice, and were to be used for a lawful purpose, the payment of a divorce settlement. Peterson did not seek to structure eleven separate deposits of an amount over $10,000, but sought only to structure a single deposit of $100,000. There was one unlawful act, one criminal charge, and one conviction based on the structuring of a single deposit.

The Fourth Circuit, however, ignored this Court's definition of structuring, every other courts of appeals' application of § 2S1.3, and the plain meaning of § 2S1.3(b)(2), and held for the first time that a single act of structuring itself constituted a "pattern of unlawful activity." Not only is the Fourth Circuit's decision contrary to every other court's interpretation of this provision, it causes

absurd results. The Fourth Circuit's decision provides that the same facts needed to satisfy the elements of a crime also constitute the facts needed to satisfy a sentencing enhancement for that same crime. In addition, vastly different defendants are now treated the same under the Fourth Circuit's reasoning; *i.e.*, an individual who structures $101,000 in cash proceeds from a property sale because of perceived paperwork issues is treated the same as a money launderer who structures several deposits totaling $101,000 for multiple drug dealing clients. In addition, a defendant such as Peterson who structures lawfully obtained funds amounting to $101,000, to be used for a lawful purpose, will receive a two level enhancement that a defendant who sells $11,000 in stolen goods each month for nine months and structures each of the monthly deposits will not receive.

* * * *

In sum, this Court and the Second, Seventh, Ninth, Tenth, and Eleventh Circuits have held that the structuring of a single large deposit to avoid a financial institution's reporting requirement is a single unlawful act. The Fourth Circuit for the first time held that the individual smaller deposits resulting from the initially structured deposit also constitute unlawful acts such that a defendant's offense level may be increased under U.S.S.G. § 2S1.3(b)(2) for engaging in a pattern of unlawful activity. This Court's intervention is necessary to resolve this split and to provide uniform guidance to

defendants, prosecutors, and judges on this important issue.

II. The Fourth Circuit's Decision Conflicts With This Court's Decisions In *Huddleston v. United States* And *United States v. Santos* Addressing The Rule Of Lenity.

The Rule of Lenity applies when there is either an "ambiguity or uncertainty in the language and structure of [an] Act." *Huddleston v. United States*, 415 U.S. 814, 831 (1974). This Court recently addressed the Rule of Lenity in *United States v. Santos*, 128 S. Ct. 2020 (2008), where the meaning of "proceeds" as used in the federal money-laundering statute was at issue. In that case, the Government argued that "proceeds" meant total receipts, which resulted in a harsher sentence, and the defendant argued that "proceeds" meant net profits, which resulted in a lesser sentence. *Id.* at 2024. This Court, relying on the plain meaning of "proceeds" as found in various dictionaries, found that the term "[made] sense under either definition" as used in the statute. *Id.*

Turning to the Rule of Lenity, this Court held that because "[u]nder either of the word's ordinary definitions, all provisions of the [statute] are coherent; no provisions are redundant; and the statute is not rendered utterly absurd . . . the tie must go to the defendant." *Id.* at 2025. Thus, where application of a statute is uncertain, and under two or more interpretations the statute makes sense, the Rule of Lenity requires that the interpretation most

favorable to a defendant be applied. *Id.* (citing *United States v. Gradwell*, 243 U.S. 476, 485 (1917); *McBoyle v. United States*, 283 U.S. 25, 27 (1931); *United States v. Bass,* 404 U.S. 336, 347-49 (1971)).

At a minimum, the phrase "pattern of unlawful activity," as applied to structuring offenses, is ambiguous. While § 2S1.3's Application Note 3 defines the phrase as "at least two separate occasions of unlawful activity involving a total amount of more than $100,000 in a 12-month period, without regard to whether any such occasion occurred during the course of the offense or resulted in a conviction for the conduct that occurred on that occasion," it does not define "unlawful activity." This is problematic with respect to structuring crimes because such crimes, by their nature, require several acts that in isolation are lawful, but in conjunction form the basis of an unlawful offense.

The plain meaning of "unlawful act" is "conduct that is not authorized by law; a violation of a civil or criminal law," Black's Law Dictionary 1574 (8th ed. 2004). The Fourth Circuit interpreted "unlawful activity" to include the several smaller deposits that comprise a single structuring offense, even though they cannot be prosecuted as separate unlawful acts. Even if the court's interpretation is sustainable, ignoring the absurdities that result from that interpretation, Peterson's interpretation is equally sustainable. Peterson argued that "unlawful activity" includes only that which is prohibited by statute and subject to criminal prosecution; *i.e.*, in

the structuring context, the breaking up of a large deposit to avoid reporting requirements. Contrary to the Fourth Circuit's holding, the smaller deposits that result from a single structuring offense are not themselves unlawful, but are merely the byproduct of the overall structuring offense. And while under Peterson's interpretation, a defendant structuring a single large deposit would receive a lesser offense level than a defendant who structures two or more larger deposits that, in total, are the same amount as the first defendant, such a result is consistent with the design of § 2S1.3(b)(2), which punishes those who repeatedly violate the structuring laws more severely. *See United States v. So*, 755 F.2d 1350, 1355 (9th Cir. 1985) (citing *United States v. Kattan-Kassin*, 696 F.2d 893 (11th Cir. 1983)).

Thus, because there is uncertainty as to whether a "pattern of unlawful activity" exists when the charged crime requires repeated acts, the Rule of Lenity should apply. And, ignoring the absurdities in the Fourth Circuit's holding, because under either of the proposed interpretations the statute remains coherent, and not repetitive or absurd, the interpretation most favorable to the defendant should be adopted. The enhancement provision in § 2S1.3(b)(2) should not, therefore, apply to a single structuring offense.

CONCLUSION

Because of the overwhelming importance in ensuring uniform application of the laws and Sentencing Guidelines for structuring offenses,

especially in light of the government's heightened effort to vigorously prosecute such offenses, this petition for a writ of certiorari should be granted.

October 12, 2010

Respectfully Submitted,

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APPENDIX A

United States Court of Appeals,
Fourth Circuit

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

Sarah H. PETERSON,
Defendant-Appellant.

No. 09-4166

Argued and Submitted March 24, 2010.
Filed June 17, 2010.

Before: SHEDD and AGEE, Circuit Judges, and HAMILTON, Senior Circuit Judge.

HAMILTON, Senior Circuit Judge:

Section 2S1.3(b)(2) of the United States Sentencing Guidelines provides a two-level enhancement for certain monetary transaction offenses if the defendant committed "the offense as part of a pattern of unlawful activity involving more than $100,000 in a 12-month period." U.S. Sentencing Guidelines Manual (USSG) § 2S1.3(b)(2). The issue presented in this appeal is whether the district court erred at sentencing when it enhanced the offense level of the appellant, Sarah Hiram Peterson (Peterson), under this Guidelines section after Peterson pleaded guilty to structuring transactions to evade financial reporting requirements, 31 U.S.C. § 5324(a)(3). Finding no error, we affirm.

I

Peterson, an Iranian-American, married her second husband, Donald Peterson (Donald), in October 1998. They separated in June 2004 and ultimately divorced in August 2007. As part of the divorce settlement, Peterson was to pay Donald $500,000.00, of which $100,000.00 was to be paid from cash Peterson had stored in a safe deposit box. The money in Peterson's safe deposit box was proceeds derived from her operation of multiple chiropractic practices in Northern Virginia.

In an attempt to evade the currency reporting requirements set forth in 31 U.S.C. § 5313(a),[1] Peterson made eleven separate deposits of $9,500.00 or less into her Wachovia bank account between August 8 and August 29, 2006. According to Peterson, she structured the $101,200.00 in deposits on the instructions of Donald, a stockbroker, who advised her to avoid the burdensome paperwork and to avoid potentially making United States law enforcement authorities suspicious about an Iranian-American depositing such a large sum in a bank account.

On October 2, 2008, the government filed a one-count criminal information charging Peterson with structuring transactions to evade reporting

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[1] Under 31 U.S.C. § 5324(a), a person may not structure transactions "for the purpose of evading the reporting requirements of [31 U.S.C. §] 5313(a)" or applicable regulations. By regulation, financial institutions must report all currency transactions involving more than $10,000, subject to certain exceptions which are not applicable here. *See* 31 C.F.R. § 103.22(b)(1).

requirements, 31 U.S.C. § 5324(a)(3). On the same day, Peterson pleaded guilty to that offense.

In preparation for sentencing, a presentence report was prepared by a United States probation officer. The probation officer set Peterson's base offense level at 6, USSG § 2S1.3(a)(2). The probation officer added eight levels pursuant to USSG § 2B1.1(b)(1)(E), because the structured amount was more than $70,000.00 but less than $120,000.00. Two more levels were added pursuant to USSG § 2S1.3(b)(2), because, according to the probation officer, Peterson's offense was committed as part of a pattern of unlawful activity involving more than $100,000.00 in a twelve-month period. Following a three level reduction for acceptance of responsibility, USSG § 3E1.1(a) & (b), Peterson's total offense level was 13. Coupled with a criminal history category of II,[2] the probation officer set Peterson's sentencing range at 15 to 21 months' imprisonment.

At the sentencing on January 23, 2009, Peterson challenged the USSG § 2S1.3(b)(2) enhancement, contending that the enhancement did not apply because her structuring offense did not involve "a pattern of unlawful activity," which is defined as "at least two separate occasions of unlawful activity . . . , without regard to whether any such occasion occurred during the course of the offense or resulted in a conviction for the conduct that occurred on that occasion." USSG § 2S1.3, comment. (n.3). According to Peterson, if the structured money came from one source, here her

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[2] Peterson had prior convictions for food stamp fraud and for making a false insurance claim.

safe deposit box, there could be only one offense, *see United States v. Davenport*, 929 F.2d 1169, 1172 (7th Cir. 1991) (holding that the structuring itself, and not each individual deposit, is the unit of prosecution in a structuring offense), and thus no pattern of unlawful activity, regardless of the number of deposits or the amount ultimately deposited. The propriety of the USSG § 2S1.3(b)(2) enhancement was extremely germane, because it not only affected whether Peterson's sentencing range would be enhanced pursuant to that section, but also because it affected whether she was entitled to the safe harbor provision in USSG § 2S1.3(b)(3). Pursuant to the safe harbor provision, Peterson's offense level would be reduced to level 6 if, among other things, the enhancement of USSG § 2S1.3(b)(2) did not apply.

The district court determined that Peterson's offense was committed as part of a pattern of unlawful activity involving more than $100,000.00 in a twelve-month period; so USSG § 2S1.3(b)(2) applied, and, as a result, the safe harbor provision in USSG § 2S1.3(b)(3) did not apply. The district court stated that the USSG § 2S1.3(b)(2) enhancement should not turn on the number of different places the defendant had stored her cash, reasoning such a result "bizarre and not intended." (J.A. 110). Rather, according to the district court, the pattern of unlawful activity could involve multiple deposits coming from the same source of funds, provided each such deposit could be prosecuted as unlawful in its own right, though not necessarily in separate counts. As a result, the district court determined Peterson's offense level to be 13, and her sentencing range to be

15 to 21 months' imprisonment. At that time, Peterson was sentenced to, among other things, twelve months' imprisonment.

On January 27, 2009, the district court entered an order vacating the sentence imposed and ordered the parties to reappear for sentencing on January 30, 2009, out of concern that it did not properly apply the Supreme Court's decision in *Kimbrough v. United States*, 552 U.S. 85 (2007). At the January 30, 2009 sentencing, after consideration of the sentencing range and the other factors set forth at 18 U.S.C. § 3553(a), the district court sentenced Peterson to, *inter alia*, eight months of community confinement with work release. Peterson appeals, challenging the district court's application of the USSG § 2S1.3(b)(2) enhancement.

II

For sentencing purposes, structuring offenses are covered by USSG § 2S1.3. The base offense level for a structuring offense is 6, plus the number of levels from the Theft Table at USSG § 2B1.1. USSG § 2S1.3(a)(2). After the base offense level is calculated, specific offense characteristics come into play. Two levels are added if (1) the defendant knew or believed that the structured funds were proceeds of unlawful activity or were intended to promote such activity or (2) the offense involved bulk cash smuggling. USSG § 2S1.3(b)(1). Moreover, two levels are added if the defendant committed the structuring offense "as part of a pattern of unlawful activity involving more than $100,000 in a 12-month period." USSG § 2S1.3(b)(2). A pattern of unlawful

activity is defined as "at least two separate occasions of unlawful activity . . . , without regard to whether any such occasion occurred during the course of the offense or resulted in a conviction for the conduct that occurred on that occasion." USSG § 2S1.3, comment. (n.3). Finally, an offense level is reduced to offense level 6 under the safe harbor provision, provided: (1) subsections (b)(1) and (b)(2) do not apply; (2) the defendant did not act with reckless disregard of the source of the structured funds; (3) the funds were the proceeds of lawful activity; and (4) the funds were used for a lawful purpose. USSG § 2S1.3(b)(3).

Peterson argues that, because, per *Davenport*, she committed only one chargeable offense of structuring, her offense was not part of a pattern of unlawful activity under USSG § 2S1.3(b)(2). More specifically, she argues that, when she made the eleven deposits, she engaged in only *one* occasion of unlawful activity, not multiple occasions of unlawful activity as required by USSG § 2S1.3(b)(2). This argument is premised on the following language in *Davenport*, "[t]he statute does not forbid the making of deposits. It forbids the structuring of a transaction." 929 F.2d at 1171. Consequently, Peterson claims she was entitled to the safe harbor provision in USSG § 2S1.3(b)(3), such that her total offense level should have been 4 (offense level 6 minus a two-level reduction for acceptance of responsibility).

The pattern of unlawful activity enhancement set forth in USSG § 2S1.3(b)(2) applies in at least three situations, which is not surprising since USSG

§ 2S1.3 applies to a variety of monetary transaction offenses. First, it applies when the occasions of unlawful activity involving more than $100,000.00 are separate from the structuring offense itself. *Redefining the Bank Secrecy Act: Currency Reporting and the Crime of Structuring*, 50 Santa Clara L. Rev. 407, 486 (2010). For example, structuring is separate from income tax evasion when the defendant structures a series of deposits to avoid paying income taxes. *Id.* Second, the enhancement applies when the defendant engages in what has been coined as "'serial structuring.'" *Id.* Serial structuring refers to a pattern of structuring activity involving more than $100,000.00 in any twelve-month period, and applies "even in the absence of other criminal activity." *Id.* Typically, serial structuring involves a series of related currency transaction report violations. *See, e.g.*, *United States v. St. Michael's Credit Union*, 880 F.2d 579, 587 (1st Cir. 1989) (holding that, to establish a pattern of unlawful activity in a case involving currency transaction report violations, the government must prove that the currency transaction report violations were both repeated and related to one another). Finally, the pattern of unlawful activity enhancement applies when the structuring offense itself involves a pattern of unlawful activity. This situation is akin to serial structuring, but typically involves a defendant who structures a series of deposits totaling in excess of $100,000.00 to avoid triggering the bank's duty to report (perfect structuring) or in an attempt to defeat the bank's responsibility to report (imperfect structuring). This final situation recognizes that some structuring offenses are part of a pattern of unlawful activity, while others are not. For example,

a structurer who takes $9999.00 from a safe deposit box containing $101,000.00 and is arrested on her first trip to the bank to deposit the money has not, as the government acknowledged at oral argument, engaged in a pattern of unlawful activity under USSG § 2S1.3(b)(2), even though she may have intended to make ten additional deposits. Similarly, a structurer who has $101,000.00 in a bedroom closet, makes the first deposit of $9999.00, and returns home only to find the remainder of the money stolen has not engaged in a pattern of unlawful activity under USSG § 2S1.3(b)(2). The same cannot be said for the structurer who is able to make the other eleven deposits before getting caught. Such a structurer has committed a series of acts that constitute a pattern of unlawful activity.

Such a construction of USSG § 2S1.3(b)(2) is consistent with Application Note 3 to USSG § 2S1.3. In Application Note 3, "pattern of unlawful activity" is defined as "at least two separate occasions of unlawful activity involving a total amount of more than $100,000 in a 12-month period, without regard to whether any such occasion occurred during the course of the offense or resulted in a conviction for the conduct that occurred on that occasion." USSG § 2S1.3, comment. (n.3). As a result, "unlawful activity" that did not occur during the course of the offense of conviction may trigger the enhancement, but, in addition, such unlawful activity that occurs during the course of the offense of conviction may trigger it as well. Thus, the "pattern of unlawful activity" can consist solely of conduct that occurred during the course of the offense, that is, the

structured transactions that occurred during the course of the structuring offense.

Our reading of USSG § 2S1.3(b)(2) is also consistent with the overall framework of USSG § 2S1.3. Section § 2S1.3 sets up a graduated punishment scheme that punishes a defendant primarily on the amount of money involved in the monetary transaction violation(s) and affords leniency for the defendant who engages in isolated monetary transactions that do not cross the $100,000.00 threshold. Generally, the larger the amount of money involved in the monetary transaction violation(s), the higher the offense level. However, the safe harbor provision essentially establishes a very narrow opening for a defendant whose offense is either made up of an *isolated* monetary transaction or several monetary transactions that do not cross the $100,000.00 threshold. A defendant who engages in multiple transactions and crosses the $100,000.00 threshold simply cannot enter that narrow opening.

Moreover, acceptance of Peterson's argument leads to absurd results. For example, under her reading of USSG § 2S1.3(b)(2), defendants essentially engaging in the same conduct would receive dramatically different sentences. For example, a defendant who has $101,000.00 in a safe deposit box and, within a one-month month period, breaks it up into eleven deposits under $10,000.00 is entitled to the safe harbor provision and receives an offense level of 6. However, a defendant who has $52,000.00 in cash on Day One and breaks it up into six deposits under $10,000.00 over the first month

but then acquires another $49,000.00 on Day Five and breaks that amount into five deposits under $10,000.00 during that same month would not be entitled to the safe harbor provision, but would be assigned an offense level of 14. In both instances, the defendant structured the same amount of money in the course of eleven transactions over roughly the same period of time. Yet, according to Peterson, the second instance would constitute a "pattern" subject to the enhancement in USSG § 2S1.3(b)(2), but the first would not. We simply cannot embrace such reasoning.

The absurdity does not end there. Embracing Peterson's reading of USSG § 2S1.3(b)(2) also needlessly leads to the divergent sentences for imperfect structuring offenses on the one hand and perfect structuring offenses on the other. An imperfect structurer violates § 5324(a)(1) when multiple deposits are made in the same or different bank accounts at the same bank on the same day such that the total of the deposits aggregates to more than $10,000.00. Each day's deposits that exceed the $10,000.00 threshold constitute a separate violation of § 5324(a)(1) because the imperfect structurer has attempted to cause the bank to fail to file the necessary currency transaction report. Thus, under Peterson's reading of USSG § 2S1.3(b)(2), the imperfect structurer who structures $101,000.00 through ten deposits over ten days would receive an offense level of 14, but the perfect structurer who structures $101,000.00 through eleven deposits on eleven separate days would receive an offense level of 6 under the safe harbor provision. Again, we simply cannot embrace such anomalies.

At the end of the day, Peterson's argument rests on the statements in *Davenport* positing that a deposit simply is not an unlawful act; therefore, according to Peterson, no deposit can be viewed as an occasion of unlawful activity under USSG § 2S1.3(b)(2). We are reluctant to take issue with the decision in *Davenport* because the court there addressed the appropriate unit of prosecution in a § 5324(a)(3) structuring case; it did not address whether the defendant engaged in a pattern of unlawful activity under USSG § 2S1.3(b)(2). There are sound reasons supporting the principle that the government should refrain from bringing a separate structuring count for each deposit, especially in cases involving numerous deposits over an extended period of time. *Cf. United States v. Tran Trong Cuong*, 18 F.3d 1132, 1142 (4th Cir. 1994) (reversing convictions in prescription drug distribution case where government obtained an indictment containing 136 counts, of which eighty counts were not supported by sufficient evidence; court noted that "[s]uch tactics invite a jury to find guilt by association or as a result of a pattern"). However, for purposes of our discussion here, we are of the opinion that each separate deposit is an unlawful act, as the government could base a prosecution on any one *or* all of the deposits, *see* 31 C.F.R. § 103.11(gg) (defining structuring as one or a series of transactions). In this regard, a structuring offense is akin to conspiracy (or other unlawful schemes), where the unlawful acts are charged as overt acts in the overall conspiracy. Put simply, because Peterson made more than one unlawful deposit and the total of her eleven deposits in a twelve-month period

exceeded $100,000.00, she committed her offense as part of a pattern of unlawful activity under USSG § 2S1.3(b)(2).

III

Peterson raises two additional arguments which she contends should be resolved in her favor. First, she contends that USSG § 2S1.3(b)(2) only applies to willful violations of § 5324(a)(3). We reject this argument for the simple reason that USSG § 2S1.3(b)(2) contains no willfulness component. Second, Peterson contends the rule of lenity should apply in this case. We reject this contention because we find no ambiguity in USSG § 2S1.3(b)(2). *See United States v. Helem*, 186 F.3d 449, 455 (4th Cir. 1999) ("The rule of lenity, which requires the court to strictly construe criminal statutes, does not apply in this case because the statute is not ambiguous.").

In sum, the district court did not err when it determined that Peterson's structuring offense was committed as part of a pattern of unlawful activity involving more than $100,000.00 in a twelve-month period, such that the USSG § 2S1.3(b)(2) enhancement applied and, as a result, the safe harbor of USSG § 2S1.3(b)(3) did not apply.

AFFIRMED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

United States of America,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action
	)	
Sarah Peterson,	)	1:08-cr-348
	)	
Defendant.	)	
	)	

REPORTER'S TRANSCRIPT

SENTENCING HEARING

Friday, January 23, 2009

BEFORE: The Honorable T.S. Ellis, III
Presiding

APPEARANCES: Office of the United States Attorney
By: Natalie Voris, AUSA
Seth Casella, SAUSA

For the Government

Timothy J. Heaphy, Esq.
Erin A. Daniels, Esq.

For the Defendant

conclusion, and that's that the Safe Harbor here is appropriate.

THE COURT: All right.

COURT'S RULING ON OBJECTION

THE COURT: The matter is before the Court on the defendant's objection to the probation officer's decision to assess a two-level increase under 2S1.3(b)(2).

It is a difficult issue, and I must say the arguments by both sides are -- both have considerable force. And I want to compliment counsel, both for the defendant and you, Mr. Heaphy, as well. I would be delighted to have both of you appearing all the time before the Court, because I think you have done a good job in your briefs and in your arguments here to shine a bright light on this problem, which is really created by language which could have been clearer. It regrettably was not.

To reiterate, the first argument made by the defendant, I do not find persuasive. I believe that 2S1.3(b)(2) does apply for this offense under 5324, and willfulness is not required for the application of (b)(2).

And then we come to the second argument, which is that 2S1.3(b)(2) does not apply because there was only one offense involved, and in order to have a pattern of unlawful activity there has to be more than one offense.

The argument is made that when there is only

one offense, there can't be a pattern of unlawful activity; and, moreover, as a policy matter, that the lesser punishment of the safety valve, six, under 2S1.3(b)(3), makes sense where there is -- funds to be used for a lawful purpose and the funds are not proceeds of an unlawful activity.

That's the argument made, that doesn't matter how much; as long as there is only one offense, you can't have a pattern of unlawful activity.

It's a close question.

The government argues to the contrary, that you can have a pattern with just one offense, as there is in this case, structuring involving, essentially inherently, a pattern offense.

It's a very close question, and in the end -- neither side has argued the rule of lenity. I don't know whether it would apply in this case or not.

But I'm persuaded, in the end, that 2S1.3(b)(2) does apply when there is only one offense, that it does not have to be multiple structuring offenses.

I found it persuasive, in my own hypothetical, that if you structured $500,000 in a year, you would still only get level six if it all came from the same pot. That struck me as bizarre and not intended.

I was concerned with Mr. Heaphy's argument that

it reads "unlawful" -- or that it reads "pattern" out of the provision, but I was then reassured by Ms. Voris that it has applications and traction in other circumstances.

So in this circumstances, where it says "as part of a pattern," here the part is the whole.

And so I have accepted the government's argument. I will adopt the findings and conclusions of the presentence report, overruling the objection.

But I do so with much less certitude than I often have in these cases, owing in substantial measure to the defendant's, I thought, very clear and forceful argument.

I would not be surprised if another court, even one in Richmond, were to disagree at some point.

All right. So we will proceed now. We are at the point of allocution.

Ms. Peterson, you now have an opportunity to address the Court and to say anything at all you wish to the Court by way of extenuation, mitigation or, indeed, anything at all you think the Court should know before sentence is imposed.

You won't be required to address the Court, but you have the opportunity to do so, if you wish to.

Do you wish to say anything, Dr. Peterson?

THE DEFENDANT: Yes, your Honor.

THE COURT: All right. Go ahead.

. . . .

authorities.

And I think, your Honor, that probation is not going to be enough for this defendant, and the government asks for a sentence at the low end of the Guidelines range.

THE COURT: Any response, Mr. Heaphy?

ATTORNEY HEAPHY: No, thank you, your Honor.

THE COURT: Come to the podium, Ms. -- or Dr. Peterson.

THE DEFENDANT: (Complies.)

IMPOSITION OF SENTENCE BY THE COURT

THE COURT: Dr. Peterson, you stand convicted of the serious crime of structuring. I have, I think, been clear that I understand what the facts are.

You paid your former husband a hundred thousand dollars. You wanted a record of it. He advised you to structure it, that is, to deposit the money in a bank in a way that would preclude any -- any report to the authorities.

And you accepted that advice, as you put it, because you didn't want to call attention, given the fact that you were originally from Iran, and you were concerned that that might raise red flags.

In the circumstances, that's plausible, but only barely so. But it is plausible, and that's how I am going to proceed on sentencing. There is no indication

otherwise.

In my view, the money that you structured came from a lawful activity and the money that you derived -- or you structured also went for a lawful purpose.

I'm not going to rely on anything about taxes or age, even though I find the age thing curious. I'm not going to rely, in sentencing, on anything the government brought to my attention relating to the submission of your taxes, late submission of your taxes.

I move to note parenthetically that, as we sit here today, someone who didn't pay his taxes at all for a period of years may become our Secretary of the Treasury, which is only a few shades short of completely outrageous.

THE DEFENDANT: Your Honor, can I say something?

THE COURT: Yes.

THE DEFENDANT: My accountant --

THE COURT: About taxes?

THE DEFENDANT: Yes.

THE COURT: I don't need to hear anything about my taxes. Taxes don't play any role in my sentencing decision, so I don't need to hear anything about it.

If you were going to be Secretary of the Treasury, I would want to hear a lot about it, and you probably couldn't be Secretary of the Treasury. But that's

69

not what you are here for. All right.

The law requires that I take into account a number of factors: the nature and circumstances of the offense -- which I have. And Mr. Heaphy has argued, I think persuasively, that you had the money from a lawful source, and you put it to a lawful purpose, and you structured it not for any bad purpose -- well, it was a bad purpose, to avoid the reporting requirement. But you weren't trying to hide any illegal activity, on this record.

The Court is also required to impose a sentence that promotes respect for the law, reflects the seriousness of the offense, provides just punishment, and deters people from engaging.

I don't think you need to be deterred, but the public, generally, needs to be deterred from engaging in structuring.

And to protect the public -- I don't think that's a -- that's not a major factor.

And to avoid unwarranted disparities, and to consider the Guidelines helpful in that regard.

I'm familiar, Mr. Heaphy, with a number of cases apart from those that you raised in this circumstance, and it is not uncommon for there to be variant sentences in these circumstances.

And indeed, in this case I'm going to impose a

70

variant sentence. But it is going to involve incarceration. It must, in order to provide deterrence generally and to provide just punishment.

It is the judgment of this Court that this defendant be committed to the custody of the Bureau of Prisons for a period of ten months. I could have imposed twelve months and a day, or ten months.

In fact, I think I will impose twelve months and a day. That is effectively ten months, because she will receive -- because it is twelve months and a day, she will receive credit for good behavior.

She will be permitted to surrender voluntarily.

I will recommend to the Bureau of Prisons that she be incarcerated in a facility commensurate with her security needs, which in my view would result in a camp, that is, a level one.

That she pay a $30,000 fine; that she pay a hundred dollar special assessment; and that she -- I have already entered the forfeiture order, so that's

already done; but the hundred dollar special assessment.

And that you serve three years of supervised release to follow any period of incarceration.

As a special condition of the supervised release, you are to provide a probation officer with any financial information requested.

71

Now, the reason I imposed twelve months and a day is because I really think about ten months is appropriate, and that's the effect of this sentence. It isn't a year sentence. It's twelve months and a day. It's below the Guidelines. It's a variant sentence.

And while I don't think this person, Dr. Peterson, needs to be deterred further, I do think that there must be a sentence for structuring to serve as a general deterrent.

And that's my quarrel with some of the ones that you mentioned.

I did impose a significant fine. And the reason for that is that she has very substantial assets. And that, too, should serve as a deterrent.

FURTHER PROCEEDINGS

THE COURT: All right, anything further in this matter today, Ms. --

ATTORNEY VORIS: No, your Honor, there is not.

THE COURT: All right.

Mr. Heaphy?

ATTORNEY HEAPHY: Your Honor, I do have one additional request, and that is for your Honor to consider release pending appeal in this case. As you know, this plea agreement is unique in that we --

THE COURT: Oh, I'm not going to -- I said she

can, she can surrender voluntarily.

ATTORNEY HEAPHY: Your Honor, I believe there is a difference between surrender voluntarily and delay in imposition of sentence --

THE COURT: Oh, you want a motion for stay pending appeal. That's very different.

ATTORNEY HEAPHY: Your Honor, I believe this is set forth in Section 3143(b).

THE COURT: All right.

ATTORNEY HEAPHY: And the standard under 3143(b) is that the Court may allow the defendant to remain at liberty --

THE COURT: I'm familiar with that.

ATTORNEY HEAPHY: Your Honor knows the standard.

Essentially, you have to find that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in a potential

sentence that does not include a term of imprisonment.

Your Honor has already observed on the record that this is a very close question, and that a court in Richmond may very well have a different view.

We believe this is a unique set of facts, a unique application of law that is not controlled by this Court's precedent or, frankly, anywhere else.

73

We do intend to file an appeal. What we would like to do, your Honor, since the appeal has such a significant consequence for Dr. Peterson, is for your Honor to allow her -- effectively to stay the imposition of your 12-month sentence.

THE COURT: Well, I won't stay the imposition of the sentence. I would stay the service.

ATTORNEY HEAPHY: That's exactly what I mean, your Honor. Forgive me. Stay --

THE COURT: I have already imposed. I'm not going to stay the imposition.

ATTORNEY HEAPHY: Stay -- forgive me -- stay the service of the sentence until the appeal runs its course.

THE COURT: What is the government's position?

ATTORNEY VORIS: The government has no objection to that, your Honor.

THE COURT: I think that's a sensible position to take. It is a close issue, and it would have, exactly as Mr. Heaphy states, a significant effect.

It may be -- I don't know what sentence I would impose if it was a level six. I can't say at this time that I would impose any incarceration at all.

So given that, I think it is perfectly appropriate to stay the sentence pending the completion of

an appeal.

So I will enter an order accordingly. Therefore, the voluntary reporting isn't pertinent at this time.

Anything further in this matter today?

ATTORNEY VORIS: No, your Honor.

ATTORNEY HEAPHY: No, thank you, your Honor.

THE COURT: All right.

I thank counsel for your cooperation and your briefs. Your arguments were very helpful.

We stand in recess until 2:00 o'clock.

(Court recessed in USA v. Peterson.)

- - -

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

United States of America,	)	
	)	
v.	)	Case No. 1:08cr348
	)	
Sarah Peterson,	)	
Defendant.	)	

ORDER

This matter came before the Court for sentencing on Friday, January 23, 2009.

For good cause,

It is hereby ORDERED, *sua sponte*, that defendant's sentence is vacated under Rule 35(a), Fed. R. Crim. P., on ground of clear error in that, contrary to *Kimbrough v. United States*, 128 S. Ct. 558 (2007), and *Spears v. United States*, No. 08-5721, 2009 U.S. LEXIS 864 (U.S. Jan. 21, 2009) (per curiam opinion), controlling weight was given to the U.S. Sentencing Guidelines.

It is further ORDERED that the parties are DIRECTED to appear for re-sentencing at 9:00 a.m., Friday, January 30, 2009.

The Clerk is directed to send a copy of this Order to all counsel of record.

Alexandria, Virginia
January 23, 2009

/s/
T.S. Ellis, III
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

United States of America,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action
	)	
Sarah Peterson,	)	1:08-cr-348
	)	
Defendant.	)	
	)	

REPORTER'S TRANSCRIPT

RESENTENCING HEARING

Friday, January 30, 2009

BEFORE: The Honorable T.S. Ellis, III
Presiding

APPEARANCES: Office of the United States Attorney
By: Natalie Voris, AUSA
Seth Casella, SAUSA

For the Government

Timothy J. Heaphy, Esq.
Erin A. Daniels, Esq.

For the Defendant

PROCEEDINGS

(Court called to order in USA v. Peterson.)

THE COURT: Let's go ahead and do Peterson.

THE CLERK: Case number 08 criminal 348, United States versus Sarah Peterson.

Would counsel please state your appearance for the record.

THE COURT: All right. Who is here for the government?

ATTORNEY VORIS: Good morning, your Honor. Natalie Voris on behalf of the United States. With me at counsel's table is Seth Casella.

THE COURT: All right. Good morning, Ms. Voris.

Mr. Heaphy, you are here with the defendant. The defendant is present.

ATTORNEY HEAPHY: I am, your Honor. Yes, thank you.

RECAPITULATION BY THE COURT

THE COURT: You both, I think, have misconstrued what I have done, so let me be clear.

The matter is before the Court on the sua sponte decision of the Court to resentence this defendant because I made a clear error of law.

The clear error of law was not the calculation of the Guidelines. I'm confident that that calculation was correct.

This is an odd case for me because I recall clearly that I sentenced this defendant to a Guideline sentence. And I struggled with it, and I did give her a Guideline sentence.

As luck would have it, I am currently working on some other cases where I sit by designation on a circuit. I won't even identify the circuit -- well, there are two circuits. And in the course of doing so, I am actually writing opinions in the area of the proper status of the Guidelines post-Kimbrough.

In that exercise, I had to think rigorously about what I was doing and so forth. Unlike many circuit judges, who don't sentence people, I actually do it every week. And so I have to be very self-conscious and aware of what status I actually give the Guidelines post-Kimbrough.

I have cited in the order that I issued not only Kimbrough, but the Pearson case, and there are actually other cases from the Supreme Court not unlike that, in which the Supreme Court is at pains to make unmistakably clear that the Guidelines should not be given determinative weight.

5

On reflection, I concluded -- because I know I did it -- I gave the Guidelines determinative weight. I know what I did. Nobody knows better than I. I did it.

I know in my mind I struggled with it, and I ultimately gave her twelve months and a day, and I know I did that because I gave the Guidelines determinative weight. I wanted to have a Guidelines sentence because I thought they merited determinative weight.

ATTORNEY VORIS: Your Honor, if I may clarify, the Sentencing Guideline recommend was 15 to 21 months.

THE COURT: Yes.

ATTORNEY VORIS: So the actual --

THE COURT: Yes --

ATTORNEY VORIS: -- sentence given --

THE COURT: -- I understand that.

ATTORNEY VORIS: -- was not a Guideline sentence. It was below the Guideline range.

THE COURT: The reason I did that, though, that I gave her that sentence is that I thought I was bound to give something close to the Guidelines. I really did give the Guidelines much more weight than they deserve.

I did not adequately consider that I could ignore -- not ignore, but that I could disagree with the Guidelines. I don't disagree with how they are calculated I think the defense's position on the calculation was wrong;

I think the government's position was correct.

But what I didn't adequately take into account, then, is that the judgments made in the Guidelines shouldn't be given determinative weight.

And I did. I said, in effect, "I really have to get as close to the Guidelines as I can."

And I don't.

And that's why I did what I did.

It wasn't the Guideline calculation -- to repeat. That, I think, was correct. I believe, because I did it, that in my thinking I gave of the Guidelines the greater weight, that Pearson and the other progeny, and Kimbrough, say should not occur.

And so this defendant deserved a resentencing based on my thinking of that issue.

In fact, let me -- the Guidelines make a judgment -- and I think the Guidelines, as I said, are correctly assessed. The Guidelines make a judgment that if you structure more than a hundred thousand dollars within a one year -- or within a year that you get a two-level enhancement, and you are not entitled to the safety valve.

We had much argument about whether it had to come from one pot or two pots, all of which I find less than satisfying. You know, we could get down to silly things like: Did it come from two shoe boxes in different parts of

the house?

Basically, I don't think that ought to be given much weight. Those kinds of inquiries don't add much.

The real issue always, of course, in structuring is why did they do it what are they trying to hide, that sort of thing.

And in this case there may -- I don't know; not on this record, but there may be some nefarious reason. But it isn't yet apparent on this record, if it does exist.

The only information I have on this record is that it was legitimate funds, and it was for a lawful purpose. That's this record.

I'm not foreclosing that there may not be a future record in another matter. But I can't tell whether that's going to happen or not. It's not before me, and I don't care at this point in time.

So, what the Guidelines say is that when you structure more than a hundred thousand dollars in a year, you get this two-level enhancement.

You can have these arguments about patterns and different -- but I don't think they get us, really, anywhere deciding what's really afoot.

Well, the Guidelines say, you know, you really ought to have a significant custody sentence of 15 months for that.

8

In the end, I disagree with that policy decision. I don't think it's right. And so -- and I felt

at the time I sentenced this defendant that I was somehow bound to get as close as I could, as much as I disagreed with it.

It is true that courts are required, carefully to calculate the Guidelines, but it isn't true that the Guidelines, because of all the effort and time we put into the calculation -- and much ink was spilled on this debate and much time was spent in the argument, but that doesn't mean that the result is somehow due determinative weight. It isn't. And that's the mistake I made.

Now, under Rule 35(b), a court can only change a sentence for the things that are listed there, but one of them is clear error of law. And there is authority on that.

I think what I do today -- I'm not sure what I'm ultimately going to do, because I'm going to hear from the parties in a minute. But if I do something different from the sentence that I have imposed, then, of course, the government may appeal, and the defendant may cross-appeal.

It would be nice to get both issues resolved, that is, the issue of the Guidelines and the issue of whether I have correctly exercised my authority under Rule 35(b), which is what the government would contest.

But in any event, I am not sure you can have

both bites at the apple. Maybe you can, because you would appeal one sentence, and they would appeal another if I imposed different sentences.

So what I'm going to do now is to hear allocution once again, and then decide if I would impose a different sentence in light of my more refined understanding of Kimbrough and its progeny.

I might note that anyone who really looks at the sentence landscape over the last 30 years has got to scratch his or her head in some consternation. In 1987 we go to determinate sentencing, with Guidelines that are mandatory.

We proceed for a number of years, and then there begins to be a retreat, ending up finally with Kimbrough and its -- well, I don't know "finally," but ending with Kimbrough and some of its progeny, which really suggest essentially indeterminate sentencing.

Judges are now entitled to disagree with the policy judgments made by the Sentencing Commissioner relating to the 100:1 ratio, and indeed any other policy judgment the Sentencing Commission makes. If you can disagree on the 100:1, you can disagree on any other policy the Sentencing Commission makes.

So it would appear to any observer that we may be headed for indeterminate sentencing, which frankly, in my

view, is a mistake. Because the most important thing we can do in sentencing is to treat like cases alike. There must be justice, that much.

And the only way to do that -- because judges are people. They are disparate views about how things should be done, what's serious and what isn't.

I am the only one that I can see in the courtroom long enough in the tooth to remember, but, you know, it used to make a great deal of difference when I practiced whether you got Judge X or Judge Y or Judge Z for sentencing, because judges in those days -- and even when I first went on the bench, I had discretion from zero to the maximum sentence.

Even worse than that, any sentence I imposed, nobody knew what the actual sentence would ultimately be, because you had a Parole Commission ready.

So it was not a good system, and steps we have taken since then have improved it a good deal.

But none of this is pertinent, really. It's just an exercise of a privilege I have, and maybe I have overexercised it.

But I would hope that both Congress and the Supreme Court are considering carefully the current landscape, how confused it is, and what we can do to make it clearer.

All right. So we are now going to go to allocution again.

Ms. Peterson, do you wish to say anything at this time?

You have the right to say anything at all you wish to the Court by way of extenuation, mitigation or anything at all. You did speak at the prior sentencing and I listened, but you have a new opportunity.

Do you wish to say anything?

ALLOCUTION BY THE DEFENDANT

THE DEFENDANT: Your Honor, I made a mistake. I take responsibility. And I hope --

THE COURT: Why did you do it?

THE DEFENDANT: As I explained, I listened to my ex-husband and I trusted him. I thought he is right. I am not doing anything wrong. I'm going to pay tax on it. And I was scared.

That's basically it.

THE COURT: What do you mean, you would have paid tax on it?

THE DEFENDANT: You know, at that time, okay, it was my income. I'm not going to cheat anybody. I pay tax on my income, and --

THE COURT: You had already paid taxes on that.

THE DEFENDANT: I'm thinking about a few years

. . . .

36

THE COURT: Well, she did have a conviction on there a long time ago, maybe a quarter of a century ago, where she -- food stamps, to get food for her children, I think that --

ATTORNEY HEAPHY: She did, your Honor. She omitted in her application a conviction that she thought had been erased. And she has been suspended for that. She has already been sanctioned by the Board of Health Professions for that. I don't believe it has any consequence for this Court.

In terms of the taxes issue, your Honor, she paid her taxes late, with an extension. And frankly, her taxes ever year, beyond the tax year of 2006, were always paid late, with an extension. There is no, on this record, intent to evade taxation. It was something that happened, frankly, as a matter of course, that she paid them late with an extension.

Going back to what's right with probation, with a significant financial sentence which the Court has already imposed, is what's right in this case. That's what we would ask the Court to impose.

THE COURT: All right.

Ms. Peterson, come to the podium.

THE DEFENDANT: (Complies.)

IMPOSITION OF SENTENCE BY THE COURT

37

THE COURT: I have been reflecting on this now for a week, and it has consumed a good bit of my time.

I am confident that I made the right decision with respect to the calculation of the Guidelines. Where I feel I erred is in giving the policy judgment of the Sentencing Commission as to structuring when -- in these circumstances, lawful source, lawful purpose -- undue weight, determinative weight. I struggled with that.

So in considering the 3553(a) factors, as I am required to do in sentencing you, I am familiar with the circumstances of the offense. I think they are predominantly that you structured $101,000, approximately, over -- making 11 consecutive deposits on bank days, less than 10,000.

You said you did it on your -- your counsel says "direction"; that's not right -- you did it at the suggestion of your former husband.

You accepted that suggestion, as I see this record, because you were concerned, after talking with him, that this would raise a red flag and because you were Iranian descent, you were concerned about what kind of flags it would raise about you.

There isn't any evidence, really, to the contrary. The government has argued that you are not or shouldn't be believed about the taxes and the like. But I

find the record on taxes to be too thin for the Court to draw the inference that Ms. Voris has asked the Court to draw.

That doesn't mean that I find that you're 100 percent truthful on that. It just mean that the record is too thin for me to conclude that you are dishonest in that regard or in any other regard.

On this record -- and I emphasize that -- I think the money came from a lawful source, it went for a lawful purpose, and I accept your explanation as to why you did it, which is, in essence, an innocent explanation.

And the issue of taxes, if there is an issue about that, or if there is an issue about the source of the money, the government can do that in another proceeding. There is no record in this proceeding.

I also have to take into account your personal history and characteristics, which I have done. It's in the presentence report, which I adopted with the exception of the rulings that I -- well, no, I think the probation officer made the same conclusion on the Guidelines, and I adopted that.

So I know your personal history and characteristics.

I don't find your personal -- or your criminal history to be significant in terms of a likelihood of

recidivism.

It is true that we need to impose a sentence that promotes respect for the law. That's, in part, why I'm having this resentencing.

And then I think I said, also, in the previous sentencing that sentencing is not a mathematical exercise. It's not a matter of calculating this and that. We do Guidelines and we do it for a purpose. One of the purposes is that it aids us in insuring that there aren't unwarranted disparities. It's a benchmark.

And then we also have to impose a sentence that deters you and deters others. That's important.

And unwarranted disparity avoidance is another goal of 3553(a). And in that regard, I'm mindful of cases that Mr. Heaphy cites, although, you know, that's not the whole universe.

What that -- what his cases reflect is that judges do make individual determinations in structuring cases. Structuring was a slightly odd area.

It is hard, I think, for Ms. Voris or for the government to understand how anybody could structure a hundred thousand dollars for totally innocent purpose. It just, as she would put it colloquially, it doesn't compute. I understand that.

And I have looked in this record for reasons.

40

They are not in this record.

So we are left with a situation where I think I made, as I said, this clear error of giving the Guideline judgment determinative weight. My judgment -- and as I said, is not a mathematical exercise. Is ultimately a judgment.

My judgment that the factors in 3553 are best effectuated by vacating the existing sentence, imposing sentence of three years probation; with a special condition of that, that you serve eight months in community confinement with work release; that you pay a $30,000 find; that you pay a $100 special assessment.

And what were the other conditions of supervised release that I imposed?

Because they, too, will become -- everything I did other than the kind of sentence.

ATTORNEY VORIS: And provide the probation officer with all requested financial information.

THE COURT: That, too, will be a condition of the supervised release -- I mean of the probation.

The disagreement I have with the policy judgment of the Commission is that the Commission seems not to distinguish, as I read the Guidelines, between this case and cases where there is much more, in effect, than this case. It doesn't distinguish -- it doesn't deal with the

lawful source and lawful purpose, other than with the amount.

And I don't agree that the difference ought to be between six -- or zero to six, and fifteen to twenty-one. I don't agree with that. I don't agree that it should be 12. Because I was trying to get as close to 15 as I could. I think that judgment is wrong.

The judgment I think is correct is the judgment rendered today. I acknowledge the narrowness of 35(a), and think I'm within that narrowness. But I wrestled with that problem. It isn't something I didn't think about.

All right. And she will be permitted, of course, to surrender voluntarily.

ATTORNEY HEAPHY: Your Honor, when we were here previously, you had allowed the -- you essentially delayed the execution of sentence until her appeal runs its course. I frankly have to consult --

THE COURT: I will continue to do that, because the government will appeal one, and you will appeal the other. And, who knows, the appellate court could even say: Do it a third time.

ATTORNEY HEAPHY: Thank you.

THE COURT: They are not likely to get a different answer from me.

Anything further in this matter today, Ms.

Voris?

ATTORNEY VORIS: No your Honor.

THE COURT: And let me point out, I think your arguments were sound, had force to them.

ATTORNEY VORIS: Thank you.

THE COURT: And yours, as well, Mr. Heaphy, and they were helpful.

ATTORNEY HEAPHY: Thank you, your Honor.

THE COURT: All right. Call the next matter.

(Court adjourned in USA v. Peterson.)

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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

United States of America,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action
	)	
Sarah Peterson,	)	1:08-cr-348
	)	
Defendant.	)	
_____	)	

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Alexandria Division

UNITED STATES OF AMERICA

V.
Sarah H. Peterson
Defendant.

Case Number: 1:08CR00348-001

USM Number: None assigned
Defendant's Attorney:
Timothy Heaphy, Esq.

JUDGMENT IN A CRIMINAL CASE

The defendant pleaded guilty to a Criminal Information.

The defendant is adjudicated guilty of these offenses:

Title and Section	Nature of Offense	Offense Class	Offense Ended	Count
31 U.S.C. 5324(a)(3)	Structuring transactions to evade reporting requirements	Felony	8/29/2006	Information

As pronounced on January 30,2009, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed

pursuant to 18 U.S.C. 3553 and the Sentencing Reform Act of 1984.

It is ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Signed this 30th day of January 2009.

/s/

T.S.Ellis, III

United States
District Judge

AO 245B (Rev. 12/03)(VAED rev. 2) Page 2 of 5
Judgment in a Criminal Case
Sheet 4 - Probation

Defendant's Name: Sarah H. Peterson
Case Number: 1:08CR00348-001

SUPERVISED PROBATION

The defendant is hereby placed on supervised probation for a term of: THREE (3) Years.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of probation.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess or use a controlled substance.

The mandatory drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution obligation, it is a condition of probation that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF PROBATION

The defendant shall comply with the standard conditions that have been adopted by this court set forth below.

1) The defendant shall not leave the judicial district without the permission of the court or probation officer;

2) The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) The defendant shall support his or her dependants and meet other family responsibilities;

5) The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance or any paraphernalia related to such substances, except as prescribed by a physician;

8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) The defendant shall not enter into any agreement to act as an informer for a special agent of a law enforcement agency without the permission of the court;

13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant's Name: Sarah H. Peterson
Case Number: 1.08CR00348-001

SPECIAL CONDITIONS OF SUPERVISED PROBATION

While on supervised probation, pursuant to this Judgment, the defendant shall also comply with the following additional special conditions:

1) The defendant must serve a term of EIGHT (8) Months in community confinement, with credit for time already served and work release permitted, as

directed by the Probation Officer. Voluntary surrender is permitted.

2) The defendant must provide the Probation Officer with access to all requested financial information.

AO 245B (Rev. 12/03)(VAED rev. 2) Page 4 of 5
Judgment in a Criminal Case
Sheet 5 – Criminal Monetary Penalties

Defendant's Name: Sarah H. Peterson
Case Number: 1.08CR00348-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 5.

Count	Assessment	Fine	Restitution
Information	$100.00	$30,000.00	$0.0
Totals:	$100.00	$30,000.00	$0.0

Lump sum payment of $30,000.00 due immediately.

The special assessment shall be due in full immediately.

The Court waives the cost of prosecution, incarceration, and supervised release.

AO 245B (Rev. 12/03)(VAED rev. 2) Page 5 of 5
Judgment in a Criminal Case
Sheet 6 – Schedule of Payments

Defendant's Name: Sarah H. Peterson
Case Number: 1.08CR00348-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

Lump sum payment of $30,000.00 due immediately. The special assessment shall be due in full immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment (2) restitution principal (3) restitution interest (4) fine principal (5) fine interest (6) community restitution (7) penalties and (8) costs, including cost of prosecution and court costs.

Nothing in the court's order shall prohibit the collection of any judgment or fine by the United States.

AO 245B (Rev. 12/03)(VAED rev. 2)
Judgment in a Criminal Case
Statement of Reasons – Page 1

Defendant's Name: Sarah H. Peterson
Case Number: 1.08CR00348-001

STATEMENT OF REASONS

I COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

A _X_ The Court adopts the presentence investigation report without change.

B ___ The Court adopts the presentence investigation report with the following changes.
(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report, if applicable.) (Use page 4 if necessary.)

1 ___ Chapter Two of the U.S.S.G. Manual determinations by court (including changes to base offense level or specific offense characteristics):

2 ___ Chapter Three of the U.S.S.G. Manual adjustment determinations by court (including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance or responsibility):

3 ___ Chapter Four of the U.S.S.G. Manual determinations by court (including changes to criminal history category or scores, career offender, or criminal livelihood determinations):

4 ___ Additional Comments or Findings (including comments or factual findings concerning certain information in the presentence report that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions. Specify court comments or findings, including paragraphs in the presentence report.)

C ___ The record establishes no need for a presentence investigation report pursuant to Fcd.R.Crim.P.32.

II COURT FINDING ON MANDATORY MINIMUM SENTENCE (Check all that apply.)

A _X_ No count of conviction carries a mandatory minimum sentence.

B ___ Mandatory minimum sentence imposed.

C ___ One or more counts of conviction alleged in the indictment carry a mandatory' minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the court has determined that the

mandatory minimum does not apply based on

___ findings of fact in this case

___ substantial assistance (18 U.S.C. § 3553(e))

___ the statutory safety valve (18 U.S.C. § 3553(f))

III COURT DETERMINATION OF ADVISORY GUIDELINE RANGE (BEFORE DEPARTURES):

Total Offense Level: 13

Criminal History Category II

Imprisonment Range: 15 to 21 months

Supervised Release Range: 2 to 3 years

Fine Range: $3,000.00 to $30,000.00

___ Fine waived or below the guideline range because of inability to pay.

AO 245B (Rev. 12/03)(VAED rev. 2)
Judgment in a Criminal Case
Statement of Reasons – Page 2

Defendant's Name: Sarah H. Peterson
Case Number: 1.08CR00348-001

STATEMENT OF REASONS

IV ADVISORY GUIDELINE SENTENCING DETERMINATION (Check only one.)

A ___ The sentence is within an advisory guideline range that is not greater than 24 months, and the court finds no reason to depart.

B ___ The sentence is within an advisory guideline range that is greater than 24 months, and the specific sentence is imposed for these reasons. (Use page 4 if necessary.)

C ___ The court departs from the advisory guideline range for reasons authorized by the sentencing guidelines manual. (Also complete Section V.)

D _X_ The court imposed a sentence outside the advisory sentencing guideline system. (Also complete Section VI.)

V DEPARTURES AUTHORIZED BY THE ADVISORY SENTENCING GUIDELINES (If applicable.)

A The sentence imposed departs (Check only one.):

___ below the advisory guideline range

___ above the advisory guideline range

B Departure based on (Check all that apply.):

1 Plea Agreement (Check all that apply and check reason(s) below.):

___ 5K1.1 plea agreement based on the defendant's substantial assistance

___ 5K3.1 plea agreement based on Early Disposition or "Fast-Track" Program binding

___ plea agreement for departure accepted by the court plea agreement for departure, which the court finds to be reasonable

___ plea agreement that states that the government will not oppose a defense departure motion

2 Motion Not Addressed in a Plea Agreement (Check all that apply and check reason(s) below.):

___ 5K11 government motion based on the defendant's substantial assistance

___ 5K1.1 government motion based on the defendant's substantial assistance

___ government motion for departure

___ defense motion for departure to which the government has not objected

___ defense motion for departure to which the government has objected

3 Other

___ Other than a plea agreement or motion by the parties for departure (Check reason(s) below.):

C Reason(s) for Departure (Check all that apply other than 5K1.1 or SK3.1.)

__ 4A1.3 Criminal History Adequacy

__ 5H1.lAge

__ 5H1.2 Education and Vocational Skills

__ 5H1.3 Mental and Emotional Condition

__ 5H1.4 Physical Condition

__ 5H1.5 Employment Record

__ 5H1.6 Family Ties and Responsibilities

__ 5H1.11 Military Record, Charitable Services, Good Works

__ 5K2.0 Aggravating or Mitigating Circumstances

__ 5K2.1 Death

__ 5K2.2 Physical Injury

__ 5K2.3 Extreme Psychological Injury

__ 5K2.4 Abduction or Unlawful Restraint

__ 5K2.5 Property Damage or Loss

__ 5K2.6 Weapons and Dangerous Instruments

__ 5K2.7 Disruption of Government Function

__ 5K2.8 Extreme Conduct

__ 5K2.9 Criminal Purpose

__ 5K2.10 Victim's Conduct

__ 5K2.11 Lesser Harm

__ 5K2.12 Coercion and Duress

__ 5K2.13 Diminished Capacity

__ 5K2.14 Public Welfare

__ 5K2.16 Voluntary Disclosure of Offense

__ 5K2.17 High-Capacity Semiautomatic Firearm

__ 5K2.18 Violent Street Gang

__ 5K2.20 Aberrant Behavior

__ 5K2.21 Dismissed and Uncharged Conduct

__ 5K2.22 Age or Health of Sex Offenders

__ 5K2.23 Discharged Terms of Imprisonment

__ 5K3.1 Early Disposition, "fast-track" Program

__ Other guideline basis (e.g., 2B1.1 commentary

D Explain the facts justifying the departure. (Use page 4 if necessary.)

AO 245B (Rev. 12/03)(VAED rev. 2)
Judgment in a Criminal Case
Statement of Reasons – Page 3

Defendant's Name: Sarah H. Peterson
Case Number: 1.08CR00348-001

STATEMENT OF REASONS

VI COURT DETERMINATION FOR SENTENCE OUTSIDE THE ADVISORY GUIDELINE SYSTEM (Check all that apply.)

A The sentence imposed departs (Check only one.):

_X_ below the advisory guideline range

___ above the advisory guideline range

B Sentence imposed pursuant to (Check all that apply.):

1 Plea Agreement (Check all that apply and check reason(s) below.):

___ binding plea agreement for a sentence outside the advisory guideline system accepted by the court

___ plea agreement for a sentence outside the advisory guideline system, which the court finds to be reasonable

___ plea agreement that states that the government will not oppose a defense motion to the court to sentence outside the advisory guideline system

2 Motion Not Addressed in a Plea Agreement (Check all that apply and check reason(s) below.):

___ government motion for a sentence outside of the advisory guideline system

___ defense motion for a sentence outside of the advisory guideline system to which the government did not object

___ defense motion for a sentence outside of the advisory guideline system to which the government objected

3 Other

_X_ Other than a plea agreement or motion by the parties for departure (Check reason(s) below.):

C Reason(s) for Sentence Outside the Advisory Guideline System (Check all that apply.)

_X_ the nature and circumstances of the offense and the history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(l)

_X_ to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C § 3553(a)(2)(A))

_X_ affords adequate deterrence to criminal conduct (18 U.S.C § 3553(a)(2)(B))

_X_ protects the public from further crimes of the defendant (18 U.S.C § 3553(a)(2)(C))

___ provides the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner (18 U.S.C § 3553(a)(2)(D))

_X_ avoids unwarranted sentence disparities (18 U.S.C § 3553(a)(6))

___ addresses the need to provide restitution to victims to provide restitution to any victims of the offense (18 U.S.C § 3553(a)(7))

D Explain the facts justifying a sentence outside the advisory guideline system. (Use page 4 if necessary.)

AO 245B (Rev. 12/03)(VAED rev. 2)
Judgment in a Criminal Case
Statement of Reasons – Page 4

Defendant's Name: Sarah H. Peterson
Case Number: 1.08CR00348-001

STATEMENT OF REASONS

VII COURT DETERMINATIONS OF RESTITUTION

A _X_ Restitution is not applicable.

B Total Amount of Restitution:

C Restitution not ordered (Check only one.):

1 ___ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663 A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).

2 ___ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A. restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).

3 ___ For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(l)(B)(ii).

4 ___ Restitution is not ordered for other reasons:

C ___ Partial restitution is ordered under 18 U.S.C. § 3663(c) for these reasons:

VIII ADDITIONAL FACTS JUSTIFYING THE SENTENCE IN THIS CASE (If applicable.)

The sentence is imposed for the reasons stated from the Bench, pursuant to 18 U.S.C. 3553, with the advisory guidelines being one factor the Court took into account in the Section 3553 analysis.

Sections 1,11, 111, IV, and VII of the Statement of Reasons form must be completed in all felony cases.

Date of Imposition of Judgment: January 30, 2009

APPENDIX C

FILED: July 13, 2010

United States Court of Appeals,
Fourth Circuit

No. 09-4166
(1:08-cr-00348-TSE-1)

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

Sarah H. PETERSON,
Defendant-Appellant.

ORDER

The Court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Shedd, Judge Agee, and Senior Judge Hamilton

For the Court

/s/ Patricia S. Conner, Clerk

APPENDIX D

31 U.S.C. § 5324: Structuring transactions to evade reporting requirement prohibited

(a) Domestic coin and currency transactions involving financial institutions. No person shall, for the purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such section, the reporting or recordkeeping requirements imposed by any order issued under section 5326, or the recordkeeping requirements imposed by any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508--

(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a) or 5325 or any regulation prescribed under any such section, to file a report or to maintain a record required by an order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508;

(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) or 5325 or any regulation prescribed under any such section, to file a report or to maintain a record required by any order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 5326, or to maintain a record required

pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508, that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

(b) Domestic coin and currency transactions involving nonfinancial trades or businesses. No person shall, for the purpose of evading the report requirements of section 5331 or any regulation prescribed under such section--

(1) cause or attempt to cause a nonfinancial trade or business to fail to file a report required under section 5331 or any regulation prescribed under such section;

(2) cause or attempt to cause a nonfinancial trade or business to file a report required under section 5331 or any regulation prescribed under such section that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with 1 or more nonfinancial trades or businesses.

(c) International monetary instrument transactions. No person shall, for the purpose of evading the reporting requirements of section 5316--

(1) fail to file a report required by section 5316, or cause or attempt to cause a person to fail to file such a report;

(2) file or cause or attempt to cause a person to file a report required under section 5316 that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any importation or exportation of monetary instruments.

(d) Criminal penalty.

(1) In general. Whoever violates this section shall be fined in accordance with title 18, United States Code, imprisoned for not more than 5 years, or both.

(2) Enhanced penalty for aggravated cases. Whoever violates this section while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.

APPENDIX E

18 U.S.C. App. § 2S1.3: Structuring Transactions to Evade Reporting Requirements; Failure to Report Cash or Monetary Transactions; Failure to File Currency and Monetary Instrument Report; Knowingly Filing False Reports; Bulk Cash Smuggling; Establishing or Maintaining Prohibited Accounts

(a) Base Offense Level:

(1) 8, if the defendant was convicted under 31 U.S.C. § 5318 or § 5318A; or

(2) 6 plus the number of offense levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to the value of the funds, if subsection (a)(1) does not apply.

(b) Specific Offense Characteristics

(1) If (A) the defendant knew or believed that the funds were proceeds of unlawful activity, or were intended to promote unlawful activity; or (B) the offense involved bulk cash smuggling, increase by 2 levels.

(2) If the defendant (A) was convicted of an offense under subchapter II of chapter 53 of title 31, United States Code; and (B) committed the offense as part of a pattern of unlawful activity involving more than $ 100,000 in a 12-month period, increase by 2 levels.

(3) If (A) subsection (a)(2) applies and subsections (b)(1) and (b)(2) do not

apply; (B) the defendant did not act with reckless disregard of the source of the funds; (C) the funds were the proceeds of lawful activity; and (D) the funds were to be used for a lawful purpose, decrease the offense level to level 6.

(c) Cross Reference

(1) If the offense was committed for the purposes of violating the Internal Revenue laws, apply the most appropriate guideline from Chapter Two, Part T (Offenses Involving Taxation) if the resulting offense level is greater than that determined above.